

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs November 27, 2007

**STATE OF TENNESSEE v. DEXTER LEWIS MCMILLAN**

**Direct Appeal from the Criminal Court for Knox County**  
**Nos. 83204, 84667, 84674    Richard R. Baumgartner, Judge**

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**No. E2007-00734-CCA-R3-CD - Filed April 17, 2008**

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The appellant, Dexter Lewis McMillan, pled guilty in the Knox County Criminal Court to two counts of driving under the influence (DUI), two counts of driving on a revoked license, two counts of resisting arrest, two counts of assault, one count of evading arrest, one count of possession of drug paraphernalia, and one count of possession of cocaine. The appellant received a total effective sentence of two years. Thereafter, the appellant filed a motion to withdraw his guilty pleas, alleging that his pleas were not knowing and voluntary due to the effect of forced medication he was taking at the time of his pleas. The trial court denied the motion, and this appeal followed. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which ALAN E. GLENN and D. KELLY THOMAS, JR., JJ., joined.

Gerald L. Gulley, Jr., Knoxville, Tennessee, for the appellant, Dexter Lewis McMillan.

Robert E. Cooper, Jr., Attorney General and Reporter; James E. Gaylord, Assistant Attorney General; Randall E. Nichols, District Attorney General; and Ta Kisha M. Fitzgerald, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. Factual Background**

The appellant pled guilty on October 2, 2006, and was released on probation. On October 26, 2006, the appellant filed a pro se motion to withdraw his guilty pleas, alleging that his state of mind had been altered on the day of his pleas due to medication he had been forced to take by the State.

At the motion hearing, the appellant testified that he and his trial counsel did not get along

well. The appellant said that trial counsel did not appear to be concerned about him and made him feel “unhuman.”

The appellant said that he repeatedly filed motions “trying to get a no contest, because I know there’s no evidence and what had been done was a violation, and tried to plead out no contest.” He explained that he filed his motions because he wanted to get out of jail. He claimed he was on “an illegal bond” that gave him “no alternative to get out” of jail except pleading guilty.

The appellant testified that he never thought he displayed “mental behavior” to the trial court. However, prior to the entry of his guilty pleas he was sent from the custody of the Knox County Sheriff’s Department to Helen Ross McNabb Mental Health Center (“Helen Ross McNabb”) and then to Lakeshore Mental Health Hospital (“Lakeshore”) for a competency evaluation. The appellant stated that upon arrival at Lakeshore, he was told that if he did not take his medication voluntarily, “they were going to shoot it in me.” The appellant maintained that the staff at Lakeshore tested his blood to ensure he took his medicine.

The appellant said that he remained at Lakeshore for fourteen days. While there, he was given tranquilizers that “altered” him. The medication continued to be administered to the appellant after he was returned to the custody of the Knox County Sheriff’s Department. The appellant acknowledged that he had periodically taken medication since 1985 but said that he had “[n]ever heard of this medication that they put me on” at Lakeshore.

The appellant said that on the morning of his guilty pleas, he spoke with the jail nurse and told her how he was feeling. Based upon her advice, the appellant did not take his medication on the day of his plea. Nevertheless, the appellant said that the medication was still

in my system from the night before or whatever. I mean, it’s something that just don’t go away, but just that morning I didn’t take it on that strength of trying to accept whatever had to be accepted or whatever, ‘cause it had me on a down mood or whatever, and I didn’t really care nothing about nothing. It was just that I felt like everything I tried to do didn’t nobody want to attend to it or none of that effect.

The appellant said that on the day of the pleas, counsel tried to provide him with information concerning his pleas. The appellant stated that counsel gave him a “motion” and attempted to read it to him. The appellant said, “I didn’t care nothing about reading [the plea documents]. Only thing – my concern was I wanted out. I felt I had been locked up too long.”

On cross-examination, the State asked the appellant if he recalled correcting the trial court at the guilty plea hearing when the trial court stated that the appellant was pleading guilty to possession of marijuana. The appellant responded, “Could have been. I don’t know. . . . [M]y whole point is I didn’t want [trial counsel] to represent me, and whatever happened or whatever came about

at that time, I did what I had to do to get out from under his jurisdiction for representing me.”

The appellant’s trial counsel testified that he had numerous meetings with the appellant prior to his pleading guilty. Trial counsel said that at a bond revocation hearing held prior to the plea hearing, the appellant testified that he was guilty of the charged offenses. Trial counsel testified that he filed a motion to withdraw after the appellant filed a complaint with the Tennessee Board of Professional Responsibility; however, the trial court denied the motion.

Counsel said that he visited the appellant at the penal farm and made several court appearances on behalf of the appellant. Because of concerns about the appellant’s mental stability, the trial court referred the appellant to Lakeshore for an evaluation. After the appellant was returned to the penal farm, counsel reviewed the records from Lakeshore concerning the medication and treatment the appellant had been given. Counsel was told by officers at the penal farm that the appellant was taking his prescribed medication. Counsel acknowledged that he did not ask the professionals treating the appellant if he was able to understand the information about his plea.

Trial counsel recalled that when he visited the appellant on September 29, 2006, the appellant said that he wanted to plead guilty. The appellant entered the pleas on October 2, 2006. Counsel said that prior to the pleas he communicated with the appellant “[t]o the extent possible.” Trial counsel explained that the appellant “didn’t want to listen to anything I had to say. It was a – it was a standard kind of a response from him. I did my best to explain to him what his rights were and what he was giving up.” Counsel stated that the appellant “indicated that he understood” and told counsel that “[h]e knew what his rights were, and he knew what he was doing.” Counsel recalled that the appellant “was lucid at the time” the trial court explained his rights to him and when he said he wanted to plead guilty.

At the conclusion of trial counsel’s testimony, the State submitted as exhibits letters from mental health professionals at Lakeshore, opining that the appellant was competent to stand trial and that a defense of insanity could not be supported.

At the conclusion of the hearing, the trial court noted that the appellant had been found competent to stand trial and that an insanity defense could not be supported. The court stated that the appellant had filed numerous pro se motions “which are really rather articulate,” indicating that the appellant grasped what he needed to say to get the court’s attention. The court said, “No one can deny that [the appellant] is an eccentric individual”; however, the court found that the appellant “is an intelligent individual who has a rather substantial grasp of the legal system, and has an appreciation of how that system works.”

The court opined that the appellant and trial counsel probably had conflicts, which were to be expected because the appellant “has his own mind and has his own opinion about how things should proceed.” Regardless, the court said that the conflicts do not indicate that the appellant was unaware of the workings of the legal system or was unable to make intelligent decisions. Notably, the court stated:

[I]t was clear to me [at the guilty plea hearing] that [the appellant] was – he was very cognizant of what was going on at those proceedings, and he assured me throughout those proceedings that he understood what he was doing. He understood what he was pleading to, he understood the sentence that he was going to receive, and assured me that he had thought this over, that he'd talked it over with other individuals, and that he was entering this plea voluntarily and knowingly, and nothing that I've seen since that point in time has convinced me to the contrary.

The court noted the appellant's statement that one of the reasons he pled guilty was to get out of jail. Moreover, the court opined that the appellant "got an extremely favorable resolution to all of his cases." Accordingly, the court found that the appellant entered his guilty pleas knowingly and intelligently and that there was no basis to allow withdrawal of the guilty pleas. On appeal, the appellant challenges the ruling of the trial court.

## **II. Analysis**

\_\_\_\_\_ When a defendant enters a plea of guilty, certain constitutional rights are waived, including the privilege against self-incrimination, the right to confront witnesses, and the right to a trial by jury. Boykin v. Alabama, 395 U.S. 238, 243, 89 S. Ct. 1709, 1712 (1969). Therefore, in order to comply with constitutional requirements a guilty plea must be a "voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31, 91 S. Ct. 160, 164 (1970). In order to ensure that a defendant understands the constitutional rights being relinquished, the trial court must advise the defendant of the consequences of a guilty plea, and determine whether the defendant understands those consequences. Boykin, 395 U.S. at 244, 89 S. Ct. at 1712.

In State v. Mackey, 553 S.W.2d 337, 341 (Tenn. 1977), our supreme court set out the procedure trial courts in Tennessee should follow when accepting guilty pleas. Prior to accepting the guilty plea, the trial court must address the defendant personally in open court, inform the defendant of the consequences of the guilty plea, and determine whether the defendant understands those consequences. See id.; Tenn. R. Crim. P. 11(c).

Once entered, a guilty plea cannot be withdrawn as a matter of right. State v. Mellon, 118 S.W.3d 340, 345 (Tenn. 2003). Rule 32(f) of the Tennessee Rules of Criminal Procedure governs the withdrawal of guilty pleas. The rule provides that "[b]efore sentence is imposed, the court may grant a motion to withdraw a guilty plea for any fair and just reason." Tenn. R. Crim. P. 32(f)(1). However, "[a]fter sentence is imposed but before the judgment becomes final, the court may set aside the judgment of conviction and permit the defendant to withdraw the plea to correct manifest injustice." Tenn. R. Crim. P. 32(f)(2).

In the instant case, the appellant filed the motion to withdraw his guilty pleas after the

imposition of sentences but before the judgments became final. Accordingly, the appellant bears the burden of demonstrating that his pleas should be withdrawn to prevent manifest injustice. State v. Turner, 919 S.W.2d 346, 355 (Tenn. Crim. App. 1995). While Rule 32(f)(2) does not define “manifest injustice,” our supreme court has stated:

Withdrawal to correct manifest injustice is warranted where: (1) the plea ‘was entered through a misunderstanding as to its effect, or through fear and fraud, or where it was not made voluntarily’; (2) the prosecution failed to disclose exculpatory evidence as required by Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), and this failure to disclose influenced the entry of the plea; (3) the plea was not knowingly, voluntarily, and understandingly entered; and (4) the defendant was denied the effective assistance of counsel in connection with the entry of the plea.

State v. Crowe, 168 S.W.3d 731, 742-43 (Tenn. 2005) (citing Turner, 919 S.W.2d at 355) (footnotes omitted). Regardless, a change of heart about pleading guilty or dissatisfaction with the sentence received does not constitute manifest injustice warranting withdrawal of a guilty plea. Id. at 743. A trial court’s decision regarding the withdrawal of a guilty plea will not be overturned absent an abuse of discretion. Turner, 919 S.W.2d at 355.

In the instant case, the trial court noted that the appellant appeared intelligent and articulate on the day of his pleas. In fact, the court recalled that the appellant corrected the trial court when it misspoke regarding the nature of one of the offenses. The court stated that the appellant clearly understood the legal process, and the pleas were knowingly and voluntarily entered. Like the trial court, we conclude that the record demonstrates that the appellant voluntarily and knowingly pled guilty after being informed of his rights and the nature of the pleas he was entering. The appellant was clearly cognizant of the proceedings, and he wanted to plead guilty to achieve release from jail. Therefore, we conclude that the appellant did not meet his burden of establishing that his pleas should be withdrawn to prevent manifest injustice. There is nothing in the record to suggest that the trial court abused its discretion by denying the appellant’s motion to withdraw his pleas.

### **III. Conclusion**

Based upon the foregoing, we affirm the judgment of the trial court.

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NORMA McGEE OGLE, JUDGE